



Ten Post Office Square, 8th Floor
South PMB #706
Boston, MA 02109
(617) 227-0548
www.consovoymccarthy.com

October 7, 2019

By CM/ECF

Catherine O'Hagan Wolfe
Clerk of Court
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Donald J. Trump v. Cyrus R. Vance, Jr., et al.*, No. 19-3204 (proposed briefing schedule)

I write in response to the Court's request for a letter by 2 p.m. today, outlining the President's proposal for briefing and argument in this case. The President's attorneys can appear on any date, at any time, as this Court sees fit. But the President respectfully disagrees with the District Attorney's proposal to brief and argue this entire case over the next four days. *See* CA2 Doc. 14 at 2. That proposal is not consistent with the "respectful and deliberate consideration" that these constitutional questions of first impression deserve. *Clinton v. Jones*, 520 U.S. 681, 690 (1997). Nor is it consistent with the "high respect" that courts have given "to the office of the Chief Executive ... [throughout] the conduct of the entire proceeding"—even in cases where they ultimately *rejected* the President's claim of immunity. *See, e.g., id.* at 707; *United States v. Nixon*, 418 U.S. 683, 714 (1974) ("Enforcement of the subpoena duces tecum [issued to President Nixon] was stayed pending this Court's resolution of the issues raised by the petitions for certiorari.").

Instead of squeezing briefing and argument into the next four days, the President proposes the following schedule:

- The President's opening brief, and any supporting *amicus* briefs, will be filed by October 11, 2019.
- Mazars' and the District Attorney's response briefs, if any, and any supporting *amicus* briefs, will be filed by October 17, 2019.
- The President's reply brief will be filed by October 18, 2019.
- The Court should hear oral argument as soon as it deems practicable.

The Court's temporary stay, *see* CA2 Doc. 10, should remain in place until this Court resolves the President's appeal, plus one week so that the losing party has an opportunity to seek Supreme Court review.

October 7, 2019

Page 2

The President's proposed schedule is still highly expedited, and it is preferable to the District Attorney's for several reasons.

1. This case presents momentous questions of first impression regarding the Presidency, federalism, and the separation of powers. The district court's opinion is 75 pages long and, among other things, takes sides in a circuit split over *Younger* abstention and "rejects" the position that the Justice Department has taken on presidential immunity for the last 50 years.
2. The District Attorney's schedule does not leave enough time for potential *amici*—including the U.S. Department of Justice—to participate in this litigation.
3. The President's proposal is consistent with what courts have done in similar cases. *See, e.g.*, CA2 Doc. 8, *Trump v. Deutsche Bank, AG*, No. 19-1540 (2d Cir.) (setting a briefing schedule of 18 days, 23 days, and 7 days, with oral argument 36 days later); CADC Doc. 1789247, *Trump v. Mazars USA, LLP*, No. 19-5142 (D.C. Cir.) (setting a briefing schedule of 18 days, 21 days, and 8 days, with oral argument 3 days later).
4. The District Attorney offers no plausible argument for why he will be injured by the President's proposal. The President already offered to toll any statutes of limitations while this case is litigated. And the District Attorney's investigation can continue without the Mazars subpoena—a document that the District Attorney admitted was not crafted based on his investigative needs, but was photocopied from an unrelated congressional investigation because he "thought it would be efficient." 9/25/19 Tr. at 30:17.

For these reasons, the President respectfully requests that the Court enter his expedited but reasonable schedule for briefing and arguing this important constitutional case.

Respectfully submitted,

s/ Patrick Strambridge

CONSOVOY MCCARTHY PLLC
Ten Post Office Square, 8th Floor
South PMB #706
Boston, MA 02109
(617) 227-0548
patrick@consovoymccarthy.com

Counsel for President Donald J. Trump

October 7, 2019

Page 3

CERTIFICATE OF SERVICE

I filed a true and correct copy of this letter with this Court's Clerk via CM/ECF, which will notify all counsel of record.

Dated: October 7, 2019

s/ Patrick Strawbridge